Calendar No. 359

102D CONGRESS
1st Session

SENATE

REPORT
102-235

CONSENTING TO CERTAIN AMENDMENTS ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII TO THE HAWAIIAN HOMES COMMISSION ACT, 1920

NOVEMBER 23 (legislative day, NOVEMBER 20), 1991.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S.J. Res. 23]

The Committee on Energy and Natural Resources to which was referred the joint resolution (S.J. Res. 23) to consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920, having considered the same, reports favorably thereon with an amendment and recommends that the joint resolution, as amended, do pass.

On page 1, line 3, strike the text and insert in lieu thereof the following:

"That, as required by section 4 of the Act entitled 'An Act to provide for the admission of the State of Hawaii into the Union', approved March 18, 1959 (73 Stat. 4), the United States hereby consents to the following amendments to the Hawaiian Homes Commission Act, 1920, as amended, adopted by the State of Hawaii in the manner required for State legislation:

"Act 16 of Session Laws of Hawaii, 1986;
"Act 85 of Session Laws of Hawaii, 1986;
"Act 249 of Session Laws of Hawaii, 1986;
"Act 36 of Session Laws of Hawaii, 1987;
"Act 28 of Session Laws of Hawaii, 1989;
"Act 265 of Session Laws of Hawaii, 1989;
"Act 14 of Session Laws of Hawaii, 1990;
"Act 24 of Session Laws of Hawaii, 1990;
"Act 150 of Session Laws of Hawaii, 1990; and
"Act 305 of Session Laws of Hawaii, 1990."

S313-49

PURPOSE

The purpose of S.J. Res. 23 is to provide Congressional consent to 10 amendments to the Hawaiian Homes Commission Act of 1920 which were enacted by the State of Hawaii during the period 1986 to 1990.

BACKGROUND

The Hawaiian Homes Commission Act (HHCA) was enacted by the United States Congress in 1921 as a homesteading program to place native Hawaiians—defined as those of 50 percent or more Hawaiian blood—on land in Hawaii designated for that purpose. Approximately 200,000 acres were defined as "available lands" under the Act. In 1959, the Hawaiian Statehood Act (Public Law 86-3, 73 Stat. 4) conveyed title to the available lands to the new State, and it generally placed responsibility for the administration of the Hawaiian Homes Commission Act in the State.

Section 4 of the Statehood Act provides that the HHCA is to be included in the Constitution of the new State as a compact with the United States, and that, with certain exceptions, the HHCA can be amended by the State "only with the consent of the United States". The exceptions are amendments relating to administration and to the powers and duties of certain State officers. Section 4 contains other restrictions as well: the qualifications of lessees cannot be changed, certain encumbrances on Hawaiian Home Lands cannot be increased, and the benefits to lessess cannot be diminished without United States consent. There is also an absolute bar to the impairment or reduction of certain named funds and to the use of income from available lands for any purpose other than as specified under subsection 5(f) of the Statehood Act.

The program itself has a history of controversy. In 1983, a State-Federal Task Force completed a review of the program to determine whether it was meeting its purposes. The Task Force documented many deficiencies including: a lack of accountability for the lands, improper use of lands by ineligible persosn and by the state, poor financial investments, and long waiting lists for leases. The Task Force also identified confusion regarding the rights and responsibilities of the Federal Government, State government and the program beneficiaries.

LEGISLATIVE HISTORY

S.J. Res. 23 through S.J. Res. 34 were introduced by Senator Inouye on January 14, 1991 and were referred to the Committee on Energy and Natural Resources. The Committee held a hearing on the resolutions on July 23, 1991, and on November 20, 1991 unanimously ordered S.J. Res. 23 reported with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on November 20, 1991, by unanimous vote of a quorum present, recommended that the Senate pass S.J. Res. 23, if amended, as described herein.

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman*	
Mr. Wirth	
Mr. Conrad*	
Mr. Akaka*	
Mr. Fowler*	
Mr. Shelby*	
Mr. Wellstone	
Mr. Wallop	
Mr. Hatfield*	
Mr. Domenici	
Mr. Murkowski	
Mr. Nickles	
Mr. Burns	
Mr. Craig	
Mr. Seymour	
Mr. Garn	

*Indicates voted by proxy.

COMMITTEE AMENDMENT

The Committee amendment, in the nature of a substitute, would provide consent to 10 of the 12 amendments for which consent was being sought. However, instead of reporting separate resolutions for each of the amendments for which consent is recommended, the Committee amendment would consolidate the consent for the ten amendments into one of the resolutions, S.J. Res. 23. The two amendments for which consent is not recommended are Act 56 of 1990, and Act 283 of 1989.

Act 56 of 1990 provides for the creation of an interagency task force in the State government of Hawaii on the subject of Hawaiian genealogy and for the purpose of allowing Hawaiians an opportunity to more easily establish their ancestry. Because Act 56 does not take the form of an amendment to the HHCA, it does not require Congressional consent in order to become effective.

Act 283 of 1989 restates that the HHCA authorizes the Department of Hawaiian Home Lands to enter into contracts to develop available lands for homestead, commercial and multipurpose projects, but it further states that the Act does not provide sufficient power for the Department to undertake and finance such development. Act 283 would expand the authority of the Department of Hawaiian Home Lands by empowering it to carry out the development of home lands by assembling such lands into residential developments and providing for the construction of public facilities to service improvements on the lands; to undertake development of available lands as a developer "or in association with a developer agreement"; and to issue revenue bonds, as authorized by the Hawaii legislature, for these purposes. The Committee is not recommending consent to Act 283 at this time because of continuing concerns regarding the policy of the State to lease available lands

to non-beneficiaries, a policy which this Act would potentially expand. In addition, there are more specific concerns regarding the potential for developers to gain long-term interests in the Home Lands through the "developer agreement(s)" authorized under this Act. It is the intent of the Committee to examine this Act, and the underlying policy of granting leases to non-beneficiaries, in hearings in early 1992, before making any further recommendations regarding Congressional consent to this Act.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S.J. Res. 23.

The measure would not impose any additional Government-established standards or significant economic responsibilities on private individuals. Little, if any, additional personal information would be collected as a result of enactment of this measure. Therefore, there would be no impact on personal privacy.

No additional paperwork would be required from the enactmemt of S.J. Res. 23.

EXECUTIVE COMMUNICATION

While the Administration did not transmit any executive communications regarding S.J. Res. 23, a representative from the Department of the Interior testified at the Committee's July 23, 1991 hearing that "the Department has no objection to Senate passage of the 11 joint resolutions before us, but we do recommend that you not pass a 12th resolution (Act 56 of 1990)."

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the joint resolution, S.J. Res. 23, as reported.

APPENDIX

Amendments to the Hawaiian Homes Commission Act, 1920, enacted in Hawaii during the period 1986 to 1990, and to which S.J. Res. 23 would provide the consent of the United States.

ACT 16

THE SENATE
THIRTEENTH LEGISLATURE, 1986
STATE OF HAWAII

S.B. NO. 2358-86 S.D. 1

A BILL FOR AN ACT

RELATING TO HAWAIIAN HOME LANDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to authorize the department of Hawaiian home lands to participate under the "Indian Economic Development Act of 1985" or any other legislation enacted by the United States Congress or by the legislature of the State of Hawaii that provides for the establishment of one or more enterprise zones on Hawaiian home lands, provided that such participation will result in economic benefits to native Hawaiians.

SECTION 2. The Hawaiian Homes Commission Act, 1920, as amended, is amended by adding a new section to be appropriately designated and to read as follows:

"§ . Enterprise zones. The department is authorized to participate in any federal or State program that permits the establishment of one or more enterprise zones on available lands, provided that participation in

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the program will result in economic benefits to native Hawaiians. The administration of the program shall be governed by rules adopted by the department in accordance with chapter 91, Hawaii Revised Statutes."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

Approved by the Governor on APR 10 1986

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THE SENATE
THIRTEENTH LEGISLATURE, 1986
STATE OF HAWAII

ACT 85 S.B. NO. 2320-86
S.D. 1
H.D. 1

A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 214, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (b) to read as follows:

"(b) In addition the department may:

(1) Use moneys in the development and operating funds, with the prior approval of the governor, to match federal, state, or county funds available for the same purposes and to that end, enter into such undertaking, agree to such conditions, transfer funds therein available for such expenditure, and do and perform such other acts and things, as may be necessary or required, as a condition to securing matching funds for such projects or works;

(2) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof, up

to a maximum of $50,000 to lessees in accordance with section 215;

(3) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof to a cooperative association in accordance with section 215;

(4) Permit and approve loans made to lessees by government agencies or private lending institutions, where the department assures the payment of such loans; provided that upon receipt of notice of default in the payment of such assured loans, the department may, upon failure of the lessee to cure the default within sixty days, cancel the lease and pay the outstanding balance in full or may permit the new lessee to assume the outstanding debt; and provided further that the department shall reserve the following rights: the right of succession to the lessee's interest and assumption of the contract of loan; the right to require that written notice be given to the department immediately upon default or delinquency of the lessee; and any other rights enumerated at the time of assurance necessary to protect the monetary and other interests of the department;

(5) Secure, pledge, or otherwise guarantee the repayment of moneys borrowed by the department from government agencies or private lending institutions and pay the interim interest or advances required for loans; provided that the State's liability, contingent or otherwise, either on moneys borrowed by the department or on departmental guarantees of loans made to lessees under this paragraph and paragraphs (2), (3), and (4) of this section, shall at no time exceed $21,000,000;

(6) Use available loan fund moneys or other funds specifically available for such purposes as cash guarantees when required by lending agencies;

(7) Exercise the functions and reserved rights of a lender of money or mortgagee of residential property in all direct loans made by government agencies or by private lending institutions to lessees the repayment of which is assured by the department. The functions and reserved rights shall include but not be limited to, the purchasing, repurchasing, servicing, selling, foreclosing, buying upon foreclosure, guaranteeing the repayment, or otherwise underwriting, of any loan, the protecting of security interest, and after

foreclosures, the repairing, renovating, or modernization and sale of property covered by the loan and mortgage[.];

(8) Pledge receivables of loan accounts outstanding as collateral to secure loans made by government agencies or private lending institutions to the department, the proceeds of which shall be used by the department to make new loans to lessees or to finance the development of available lands for purposes permitted by this Act; provided that any loan agreement entered into under this paragraph by the department shall include a provision that the money borrowed by the department is not secured directly or indirectly by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the receivables specifically pledged to repay the loan; provided further that in making loans or developing available lands out of money borrowed under this paragraph, the department may establish, revise, charge, and collect fees, premiums, and charges as

necessary, reasonable, or convenient, to assure repayment of the funds borrowed, and the fees, premiums, and charges shall be deposited into the Hawaiian home trust fund; and provided further that no moneys of the Hawaiian home loan fund may be pledged as security under this paragraph; and

(9) Notwithstanding any other provisions of this Act to the contrary, transfer into the Hawaiian home trust fund any available and unpledged moneys from any loan funds, the Hawaiian loan guarantee fund, or any fund or account succeeding thereto, except the Hawaiian home loan fund, for use as cash guarantees or reserves when required by a federal agency authorized to insure or guarantee loans to lessees."

SECTION 2. The provisions of this amendment are declared to be severable, and if any section, sentence, clause or phrase, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect then, that portion only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of this amendment or the application thereof shall not be affected.

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SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

Approved by the Governor on APR 2 2 1986

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HOUSE OF REPRESENTATIVES
THIRTEENTH LEGISLATURE, 1986
STATE OF HAWAII

ACT 249

H.B. NO. 2102-86 H.D. 1 S.D. 2

A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 202, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (b) to read as follows:

"(b) The provisions of section 76-16, Hawaii Revised Statutes, shall apply to the positions of the first deputy and private secretary to the chairman of the commission. The department may hire temporary staff on a contractual basis not subject to chapters 76, 77, and 78, Hawaii Revised Statutes, when the services to be performed will assist in carrying out the purposes of the Act. These positions may be funded through appropriations for capital improvement program projects and by the administration account, [development,] operating [funds,] fund, or native Hawaiian rehabilitation fund. No contract shall be for a period longer than two years, but individuals hired under contract may be employed for a maximum of six years; provided that the six-year limitation shall not apply if the

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department, with the approval of the governor, determines that such contract individuals are needed to provide critical services for the efficient functioning of the department. All other positions in the department shall be subject to chapters 76 and 77, Hawaii Revised Statutes.

All vacancies and new positions which are covered by chapters 76 and 77, Hawaii Revised Statutes, shall be filled in accordance with sections 76-23 and 76-31, Hawaii Revised Statutes, provided that the provisions of these sections shall be applicable first to qualified persons of Hawaiian extraction."

SECTION 2. Section 213, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

"§213. Funds and accounts. (a) There are established in the treasury of the State [seven] two revolving funds, to be known respectively as the Hawaiian home loan fund[, the additional receipts loan fund,] and the Hawaiian home general loan fund[, the Hawaiian home replacement loan fund, the Hawaiian home repair loan fund, the Hawaiian home farm loan fund, and the Hawaiian home operating fund].

(1) Hawaiian home loan fund. [Thirty per cent of the state receipts derived from the leasing of cultivated sugarcane lands under any other provision of law or

from water licenses shall be deposited into this fund. The aggregate amount of this fund including:

(A) The outstanding principal of all loans, advances, and transfers which have been made to other funds for which this fund has not been or need not be reimbursed; and

(B) The installments of principal paid by the lessees upon loans made to them from the fund, or payments representing reimbursements on account of advances, but not including interest on such loans or advances,

shall not exceed $5,000,000.] The moneys in this fund shall be available for the purposes enumerated in section 214 of this Act[.] and for payments provided in section 209 and shall not be expended for any other purpose except as provided in subsection (b)(1) of this section.

[That portion of the thirty per cent of the state receipts derived from the leasing of cultivated sugarcane lands under any other provision of law or from water licenses, in excess of the present ceiling in the Hawaiian home loan fund of $5,000,000, which

amount is called "additional receipts," shall be transferred to the Hawaiian home development fund, to the additional receipts loan fund, and the Hawaiian home education fund as follows: fifteen per cent to the additional receipts loan fund; thirteen per cent to the Hawaiian home development fund; and seventy-two per cent to the Hawaiian home education fund; provided that the aggregate amount so transferred shall not exceed the maximum amount of $5,000,000.]

Any interest or other earnings arising out of investments from this fund shall be credited to and deposited into the Hawaiian home operating fund.

[(2) Additional receipts loan fund. Moneys transferred to this fund, installments of principal paid by the lessees upon loans made to them from this fund, or as payments representing reimbursement on account of advances, but not including interest on such loans or advances, shall be used for the purposes enumerated in section 214 of this Act.

(3)] (2) Hawaiian home general loan fund. Moneys appropriated by the legislature for the construction of homes but not otherwise set aside for a particular

fund, [excluding moneys appropriated] for construction of replacement homes[;], for home repairs or additions, or for the development and operation of a farm, ranch, or aquaculture operation; moneys transferred from [the Hawaiian home interest fund;] other funds; and installments of principal paid by the lessees upon loans made to them from this fund, or as payments representing reimbursements on account of advances, but not including interest on such loans or advances, shall be deposited into this fund. The moneys in the fund shall be used for purposes enumerated in section 214 of this Act[.]; provided that loans to lessees for repairs to their existing homes and for additions to such homes shall not be in excess of $15,000; provided further that, in addition to the conditions enumerated in section 215, farm loans shall be subject to the following conditions: to be eligible for a farm loan the applicant shall derive, or present an acceptable plan to derive, a major portion of the applicant's income from farming; farm loans made for the purpose of soil and water conservation shall not exceed $20,000 and shall be for a term not to exceed ten years.

Subsidies and grants or cost-sharing funds entitled and received by the lessee for soil and water conservation purposes shall be assigned to the department for the repayment of the outstanding farm indebtedness; and the lessee shall carry out recommended farm management practices approved by a qualified agricultural agency.

(A) The department may create an account within this fund to support the guarantee of repayment of loans made by government agencies or private lending institutions to a holder of a lease under section 207(a) of this Act or license issued under section 207(c)(1)(B) of this Act.

(B) The department may create an account within this fund for moneys borrowed from government agencies or private lending institutions to be used for any of the purposes enumerated in section 214 of this Act. Installments of principal and that part of the interest equal to the interest charged to the department by the lender paid by the lessees on the loans made to them from this account shall be deposited into the same account; any additional interest or other earnings arising out of

investments from this account shall be credited to and deposited into the Hawaiian home receipts fund.

[(4) Hawaiian home replacement loan fund. The moneys in this fund shall be used to make loans to lessees to construct replacement homes upon their lots. Moneys appropriated by the legislature for replacement home construction loans; moneys transferred from the Hawaiian home interest fund; installments of principal paid by the lessees upon loans made to them from this fund; and moneys transferred from other funds or accounts by legislative authorization shall be deposited into this fund.

(5) Hawaiian home repair loan fund. Moneys appropriated to this fund by the legislature; moneys transferred from the Hawaiian home interest fund; and installments of principal paid by the lessees upon loans made to them from this fund shall be deposited into this fund. The moneys in this fund shall be used to make loans in amounts not in excess of $15,000 to lessees for repairs to their existing homes and for additions to such homes.

(6) Hawaiian home farm loan fund. Moneys appropriated to this fund by the legislature; moneys transferred from the Hawaiian home interest fund; and installments of principal paid by the lessees upon loans made to them from this fund shall be deposited into this fund. The moneys in this fund shall be used to make loans in the amount provided in section 215 for the development and operation of a farm, ranch, or aquaculture operation or ninety per cent of the cost of the project, whichever is less, to lessees of agricultural tracts, pastoral tracts, and tracts used for aquaculture leased under section 207 of this Act. In addition to the purposes enumerated in section 214(a) such loans may be made for the following purposes:

(A) The initial and on-going development, improvement, operation, and expansion of homestead farms, ranches, and aquaculture enterprises;

(B) The liquidation of indebtedness incurred for any of the foregoing purposes relating to farm loans aged less than five years;

(C) The payment of normal and reasonable living expenses of a full-time farmer;

(D) The planning, layout, and installation of soil and water conservation practices; or

(E) For emergency purposes to provide relief and rehabilitation to homestead farmers and ranchers due to damage by rain and wind storms, droughts, tidal wave, earthquake, volcanic eruption, and other natural catastrophies, and for livestock disease, epidemics, crop blights, and serious effects of prolonged shipping and dock strikes.

In addition to the conditions enumerated in section 215 farm loans shall be subject to the following conditions: to be eligible for a farm loan the applicant shall derive, or present an acceptable plan to derive a major portion of his income from farming; farm loans made for the purpose of soil and water conservation shall not exceed $20,000 and shall be for a term not to exceed ten years. Subsidies and grants or cost sharing funds entitled and received by the lessee for soil and water conservation purposes shall be assigned to the department for the repayment of the outstanding farm indebtedness; and the lessee is required to carry out recommended farm management

practices approved by a qualified agricultural agency.

(7) Hawaiian home operating fund. The interest transferred from the Hawaiian home loan fund, all fees received by the department from any other source, and moneys transferred from the Hawaiian home interest fund, except moneys received by the Hawaiian home administration account, shall be directly deposited into the Hawaiian home operating fund. The moneys in this fund shall be available:

(A) For construction and reconstruction of revenue-producing improvements intended to principally serve occupants of Hawaiian home lands, including acquisition or lease therefor of real property and interests therein, such as water rights or other interests;

(B) For payment into the treasury of the State of such amounts as are necessary to meet the interest and principal charges for state bonds issued for such revenue-producing improvements;

(C) For operation and maintenance of such improvements constructed from such funds or other funds;

(D) For the purchase of water or other utilities,

goods, commodities, supplies, or equipment needed for services, or to be resold, rented, or furnished on a charge basis to occupants of Hawaiian home lands; and

(E) For appraisals, studies, consultants (architects, engineers), or any other staff services including those in section 202(b) required to implement, develop, and operate these projects.

The moneys in this fund may be supplemented by other funds available for, or appropriated by the legislature for, the same purposes. In addition to such moneys, this fund, with the approval of the governor, may be supplemented by transfers, made on a loan basis from the Hawaiian home loan fund for a period not exceeding ten years; provided that the aggregate amount of such transfers outstanding at any one time shall not exceed $500,000.]

(b) There are established in the treasury of the State [eight] five special funds, to be known respectively as the Hawaiian home [development] operating fund, the Hawaiian home administration account, [the Hawaiian loan guarantee fund,] the Hawaiian home [interest] receipts fund, [the borrowed money

fund,] the Hawaiian home trust fund, [the Hawaiian home education fund,] and the native Hawaiian rehabilitation fund.

(1) Hawaiian home [development] operating fund. The interest transferred from the Hawaiian home loan fund, all moneys received by the department from any other source, and moneys transferred from the Hawaiian home receipts fund, shall be deposited into the Hawaiian home operating fund. The moneys in this fund, without the prior written approval of the governor, shall be available:

(A) For construction and reconstruction of revenue-producing improvements intended to serve principally occupants of Hawaiian home lands, including acquisition or lease therefor of real property and interests therein, such as water rights or other interests;

(B) For payment into the treasury of the State of such amounts as are necessary to meet the interest and principal charges for state bonds issued for such revenue-producing improvements;

(C) For operation and maintenance of such improvements constructed from such funds or other

funds;

(D) For the purchase of water or other utilities, goods, commodities, supplies, or equipment needed for services, or to be resold, rented, or furnished on a charge basis to occupants of Hawaiian home lands; and

(E) For appraisals, studies, consultants (including architects, engineers), or any other staff services including those in section 202(b) required to plan, implement, develop, or operate these projects.

The moneys in this fund may be supplemented by other funds available for or appropriated by the legislature for the same purposes. In addition to such moneys, this fund, with the approval of the governor, may be supplemented by transfers, made on a loan basis from the Hawaiian home loan fund for a period not exceeding ten years; provided that the aggregate amount of such transfers outstanding at any one time shall not exceed $500,000.

[Moneys transferred to] In addition, moneys of this fund shall be made available with the prior written

approval of the governor for offsite improvements and development necessary to serve present and future occupants of Hawaiian home lands; for improvements, additions, and repairs to all assets owned or leased by the department excluding structures or improvements that the department is obligated to acquire under section 209 of this Act; for engineering, architectural, and planning services to maintain and develop properties; for such consultant services as may be contracted for under this Act; for purchase or lease of necessary equipment; for acquisition or lease of real property and interest therein; and for improvements constructed for the benefit of beneficiaries of this Act and not otherwise permitted in the various loan funds[,] or the administration account[, or the operating fund].

(2) Hawaiian home administration account. The entire receipts derived from any leasing of the available lands defined in section 204 of this Act and transfers from the Hawaiian home [interest] receipts fund shall be deposited into this account. Any interest or other earnings arising out of investments from this fund

shall be credited to and deposited into this fund. The moneys in this account shall be expended by the department for salaries and all other administration expenses of the department in conformity with general law applicable to all departments of the State, and no sums shall be expended for structures and other permanent improvements. This account shall be subject to the following conditions and requirements:

(A) The department shall, when required by the governor but not later than November 15 preceding each regular session of the legislature, submit to the state director of finance its budget estimates of expenditures for the next fiscal period in the manner required by general law.

(B) The department's budget as approved by the governor shall be included in the governor's budget report and shall be transmitted to the legislature for its approval.

(C) Upon legislative approval of a budget, the amount appropriated shall be made available to the department. If no budget is approved by the legislature prior to its adjournment, sums

accruing to this account shall not be expended for any other purpose but shall remain available for future use. Any amount in this account which is in excess of the amount approved by the legislature or made available for the fiscal period may be transferred to the Hawaiian home [development] operating fund.

[(3) The Hawaiian loan guarantee fund. There may be created a fund to support the guarantee of repayment of loans made by government agencies or private lending institutions to those holding leases or licenses issued under section 207 of this Act. The department's guarantee of repayment shall be adequate security for a loan under any state law prescribing the nature, amount, or form of security or requiring security upon which loans may be made.

(4)] (3) Hawaiian home [interest] receipts fund. All interest moneys from loans or investments received by the department from any fund except as provided for in each respective fund, shall be deposited into this fund. At the end of each quarter, all moneys in this fund [shall] may be transferred to [the Hawaiian home

development fund,] the Hawaiian home operating fund, the Hawaiian home administration account, the Hawaiian home trust fund, and any loan fund in accordance with rules adopted by the department. [Moneys transferred to the Hawaiian home administration account shall be used to fund salaries and other administrative expenses related to loan services and delinquent collection activities.

(5) Borrowed money fund. The department may borrow from government agencies or private lending institutions and deposit borrowed moneys into this fund to be used for the purpose enumerated in section 214 of this Act. Installments of principal and that part of the interest equal to the interest charged to the department by the lender paid by the lessees upon loans made to them from this fund shall be deposited into this fund; any additional interest or other earnings arising out of investments from this fund shall be credited to and deposited into the Hawaiian home interest fund.

(6)] (4) Hawaiian home trust fund. All moneys deposited into this fund shall be available for transfers into any other fund or account authorized by the Act or for

any public purpose deemed by the commission to further the purposes of the Act. Public purpose, as used herein, includes the formation of an account within the Hawaiian home trust fund as a reserve for loans insured or guaranteed by the Federal Housing Administration, Veterans Administration, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee loans. Notwithstanding any other law to the contrary, the department is expressly authorized to deposit the reserve for loans in any duly organized bank in the State or elsewhere in the United States with automatic fund transfer capabilities and at such reserve amounts as shall be reasonably required by the federal agencies as a condition for participation in their respective insurance or guarantee programs.

[(7) Hawaiian home education fund. Moneys transferred to this fund may be drawn upon from time to time by the department of education, with prior written approval of the governor, for such educational projects as shall be developed and directed by the department of education and department of Hawaiian home lands; provided that

such projects shall be directed primarily to the educational improvement of the children of lessees, the funds to be used primarily at the preschool and elementary grade levels.

~~(8)~~ (5) Native Hawaiian rehabilitation fund.

(A) Pursuant to Article XII, Section 1, of the State Constitution, thirty per cent of the state receipts, derived from lands previously cultivated as sugarcane lands under any other provision of law and from water licenses, shall be deposited into this fund. The department shall use this money solely for the rehabilitation of native Hawaiians which shall include, but not be limited to, the educational, economic, political, social, and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved and perpetuated.

(B) Any payment of principal, interest, or other earnings arising out of the loan or investment of money from this fund shall be credited to and deposited into this fund.

(C) Sections 214, 215, 216, and 217 of this Act shall

not apply to administration of this fund. The department is authorized to adopt rules necessary to administer and carry out the purposes of this fund."

SECTION 3. Section 214, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

"§214. Purposes of loans; authorized [[]actions[]]. (a) The department may make loans from revolving funds to any lessee or native Hawaiian to whom, or any cooperative association to which, a lease has been issued under section 207(a) of this Act or a license has been issued under section [207; 207(c)(1)(B) of this Act. Such loans may be made for the following purposes:

(1) The repair or maintenance or purchase or erection of dwellings on any tract, and the undertaking of other permanent improvements thereon;

(2) The purchase of livestock, swine, poultry, fowl, aquaculture stock, and farm and aquaculture equipment;

(3) Otherwise assisting in the development of tracts and of farm, ranch, and aquaculture operations[;], including:

(A) The initial and on-going development, improvement, operation, and expansion of homestead farms, ranches, and aquaculture enterprises;

(B) The liquidation of indebtedness incurred for any of the foregoing purposes relating to farm loans aged less than five years;

(C) The payment of normal and reasonable living expenses of a full-time farmer;

(D) The planning, layout, and installation of soil and water conservation practices; and

(E) Providing relief and rehabilitation to homestead farmers and ranchers due to damage by rain and wind storms, droughts, tidal wave, earthquake, volcanic eruption, and other natural catastrophies, and for livestock disease, epidemics, crop blights, and serious effects of prolonged shipping and dock strikes;

(4) The cost of breaking up, planting, and cultivating land and harvesting crops, the cost of excavating or constructing aquaculture ponds and tanks, the purchase of seeds, fertilizers, feeds, insecticides, medicines, and chemicals for disease and pest control for animals, fish, shellfish, and crops, and the related supplies required for farm, ranch, and aquaculture operations, the erection of fences and other permanent improvements

for farm, ranch, and aquaculture purposes and the expense of marketing; and

(5) To assist [lessees] licensees in the operation or erection of theaters, garages, service stations, markets, stores, and other mercantile establishments, all of which shall be owned by [lessees of the department] native Hawaiians or by organizations formed and controlled by [the lessees.] native Hawaiians.

(b) In addition the department may:

(1) Use moneys in the [development and] Hawaiian home operating [funds,] fund, with the prior approval of the governor, to match federal, state, or county funds available for the same purposes and to that end, enter into such undertaking, agree to such conditions, transfer funds therein available for such expenditure, and do and perform such other acts and things, as may be necessary or required, as a condition to securing matching funds for such projects or works;

(2) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof, up to a maximum of $50,000 to lessees in accordance with

section 215;

(3) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof to a cooperative association in accordance with section 215;

(4) Permit and approve loans made to lessees by government agencies or private lending institutions, where the department assures the payment of such loans; provided that upon receipt of notice of default in the payment of such assured loans, the department may, upon failure of the lessee to cure the default within sixty days, cancel the lease and pay the outstanding balance in full or may permit the new lessee to assume the outstanding debt; and provided further that the department shall reserve the following rights: the right of succession to the lessee's interest and assumption of the contract of loan; the right to require that written notice be given to the department immediately upon default or delinquency of the lessee; and any other rights enumerated at the time of assurance necessary to protect the monetary and other interests of the department;

(5) Secure, pledge, or otherwise guarantee the repayment of

moneys borrowed by the department from government agencies or private lending institutions and pay the interim interest or advances required for loans; provided that the State's liability, contingent or otherwise, either on moneys borrowed by the department or on departmental guarantees of loans made to lessees under this paragraph and paragraphs (2), (3), and (4) of this section, shall at no time exceed $21,000,000; the department's guarantee of repayment shall be adequate security for a loan under any state law prescribing the nature, amount, or form of security or requiring security upon which loans may be made;

(6) Use available loan fund moneys or other funds specifically available for such purposes as cash guarantees when required by lending agencies;

(7) Exercise the functions and reserved rights of a lender of money or mortgagee of residential property in all direct loans made by government agencies or by private lending institutions to lessees the repayment of which is assured by the department. The functions and reserved rights shall include but not be limited to, the purchasing, repurchasing, servicing, selling,

foreclosing, buying upon foreclosure, guaranteeing the repayment, or otherwise underwriting, of any loan, the protecting of security interest, and after foreclosures, the repairing, renovating, or modernization and sale of property covered by the loan and mortgage."

SECTION 4. Section 220, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

"§220. [[]Development projects; appropriations by legislature[:]; bonds issued by legislature.[]] (a) The department is authorized directly to undertake and carry on general water and other development projects in respect to Hawaiian home lands and to undertake other activities having to do with the economic and social welfare of the homesteaders, including the authority to derive revenue from the sale, to others than homesteaders, of water and other products of such projects or activities, or from the enjoyment thereof by others than homesteaders, where such sale of products or enjoyment of projects or activities by others does not interfere with the proper performance of the duties of the department[:]; provided[, however,] that roads through or over Hawaiian home lands, other than federal-aid highways and roads, shall be maintained by the

county or city and county in which [said] the particular road or roads to be maintained are located.

(b) The legislature is authorized to appropriate out of the treasury of the State such sums as it deems necessary to augment the [Hawaiian home-loan fund, the Hawaiian home-development fund, the Hawaiian home-operating fund, and the Hawaiian home-administration account,] funds of the department and to provide the department with funds sufficient to execute and carry on such projects and activities. The legislature is further authorized to issue bonds to the extent required to yield the amount of any sums so appropriated for the payment of which, if issued for revenue-producing improvements, the department shall provide, as set forth in section [213(d).] 213.

(c) To enable the construction of irrigation projects which will service Hawaiian home lands, either exclusively or in conjunction with other lands served by such projects, the department is authorized, with the approval of the governor, to [grant]:

(1) Grant to the [[]board of land and natural resources[]], or to any other agency of the government of the State or the United States undertaking the construction and operation of such irrigation projects, licenses for

rights-of-way for pipelines, tunnels, ditches, flumes, and other water conveying facilities, reservoirs, and other storage facilities, and for the development and use of water appurtenant to Hawaiian home lands; [to exchange]

(2) Exchange available lands for public lands, as provided in section [204(4)] 204 of this [title,] Act, for sites for reservoirs and subsurface water development wells and shafts; [to request]

(3) Request any such irrigation agency to organize irrigation projects for Hawaiian home lands and to transfer irrigation facilities constructed by the department to any such irrigation agency; [to agree]

(4) Agree to pay the tolls and assessments made against community pastures for irrigation water supplied to such pastures; and [to agree]

(5) Agree to pay the costs of construction of projects constructed for Hawaiian home lands at the request of the department, in the event the assessments paid by the homesteaders upon lands are not sufficient to pay such costs[: Provided,];

provided that licenses for rights-of-way for the purposes and in

the manner specified in this section may be granted for a term of years longer than is required for amortization of the costs of the project or projects requiring use of such rights-of-way only if authority for such longer grant is approved by an act of the legislature of the State. Such payments shall be made from, and be a charge against the Hawaiian [home-operating] home operating fund."

SECTION 5. Section 222, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (a) to read as follows:

"(a) The department shall adopt rules and regulations and policies in accordance with [the provisions of] chapter 91, Hawaii Revised Statutes. The department may make such expenditures as are necessary for the efficient execution of the functions vested in the department [[]by[]] this Act. All expenditures of the department[, as herein provided out of the Hawaiian home-administration account, the Hawaiian home-development fund, or the Hawaiian home-operating fund,] and all [monies] moneys necessary for loans made by the department, in accordance with the provisions of this Act, [from the Hawaiian home-loan fund,] shall be allowed and paid upon the presentation of itemized vouchers [therefor,] approved by the chairman of the

commission[.] or the chairman's designated representative. The department shall make an annual report to the legislature of the State upon the first day of each regular session [thereof] and such special reports as the legislature may from time to time require. The chairman and members of the commission shall give bond as required by law. The sureties upon the bond and the conditions thereof shall be approved annually by the governor."

SECTION 6. The state comptroller and the chairman of the Hawaiian homes commission are authorized to take such actions as may be necessary to implement the funding structure provided for by this Act, including the following actions:

(1) Transfer the June 30, 1986, balances of the Hawaiian home replacement loan fund, Hawaiian home repair loan fund, Hawaiian home farm loan fund, Hawaiian loan guarantee fund, and the borrowed money fund to the Hawaiian home general loan fund;

(2) Transfer the June 30, 1986, balances of the Hawaiian home development fund to the Hawaiian home operating fund; and

(3) Transfer the June 30, 1986, balances of the Hawaiian home interest fund and the Hawaiian home education fund to the Hawaiian home receipts fund.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. The provisions of the amendments made by this Act to the Hawaiian Homes Commission Act, 1920, as amended, are declared to be severable, and if any section, sentence, clause, or phrase, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect, then that portion only shall take effect upon the granting of consent by the United States and effectiveness of the remainder of these amendments or the application thereof shall not be affected.

SECTION 9. This Act shall take effect on July 1, 1986.

Approved by the Governor on MAY 29 1986

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THE SENATE
FOURTEENTH LEGISLATURE, 19 82
STATE OF HAWAII

ACT 36 S.B. NO. 1726 H.D. 2

A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Act 112, Session Laws of Hawaii 1981, amended section 209 of the Hawaiian Homes Commission Act, 1920, as amended, and added a new section providing for the valuation and purchase of improvements at the surrender or cancellation of a homestead lease. Act 112 is subject to the consent of the U. S. Congress, but has not been submitted for approval because its provisions conflict with subsequent amendments to the Hawaiian Homes Commission Act which were submitted for approval and have been approved of by Congress. Act 112 therefore has not, and cannot, be implemented.

Under section 209 of the Hawaiian Homes Commission Act, if a homestead lease is cancelled or surrendered, or if the lessee dies without leaving a relative qualified to succeed to the lease, the department of Hawaiian home lands is required to appraise the value of the

improvements and growing crops, if any, and to pay that amount to the lessee, or in the case of a deceased lessee, to the deceased's designee or estate, less taxes due and any indebtedness to the department.

In 1982, the legislature passed Act 272 which reduced the blood quantum requirement of a lessee's spouse or children in order to succeed to one-quarter Hawaiian. Act 272 was made expressly subject to congressional consent as required under section 4, of the Admission Act. In 1985, the legislature passed Act 137 which also effected certain amendments to section 209 to permit payout of net proceeds to nonqualified spouse or nonqualified children as designated by a deceased lessee. Section 209(a) of the Hawaiian Homes Commission Act, as it appears in volume 1, Hawaii Revised Statutes (1985 Repl.) is the law as passed by Act 137, Session Laws of Hawaii 1985. Act 137, section 3 provides as follows:

"SECTION 3. The amendments made by this Act shall not affect the validity of any amendments to the Hawaiian Homes Commission Act, 1920, as amended, that may be pending before the United States Congress or that may be acted upon by the Congress before or after the effective date of this Act and, upon

Congress' consent to such amendments, this Act shall be amended to conform to such amendments as consented to by Congress."

On October 27, 1986, by House Joint Resolution No. 17, Congress consented to all amendments to the Hawaiian Homes Commission Act, 1920, as amended, up to June 30, 1985, except Act 112, Session Laws of Hawaii 1981.

The purpose of this Act is to repeal Act 112, Session Laws of Hawaii 1981, and to revise the manner by which the department of Hawaiian home lands shall handle the payment of the net proceeds of the value of the leasehold interest whenever a homestead lease is surrendered, cancelled, or terminated by allowing the department to use the Hawaiian home general loan fund to pay net proceeds if the Hawaiian home loan fund does not have sufficient cash. A further purpose of this Act is to provide clarity to section 209 as amended by Act 272, Session Laws of Hawaii 1982, and Act 137, Session Laws of Hawaii 1985.

SECTION 2. Act 112, Session Laws of Hawaii 1981, is repealed.

SECTION 3. Section 209, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

"§209. Successors to lessees. (a) Upon the death of the lessee, [his] the lessee's interest in the tract or tracts and the improvements thereon, including growing crops and [agricultural] aquacultural stock (either on the tract or in any collective contract or program to which the lessee is a party by virtue of [his] the lessee's interest in the tract or tracts), shall vest in the relatives of the decedent as provided in this paragraph. From the following relatives of the lessee who are (1) at least one-quarter Hawaiian, husband, wife, or children, or (2) native Hawaiian, widows or widowers of the children, grandchildren, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews, -- the lessee shall designate the person or persons to whom [he] the lessee directs [his] the lessee's interest in the tract or tracts to vest upon [his] the lessee's death. The Hawaiian blood requirements shall not apply to the descendants of those who are not native Hawaiians but who were entitled to the leased lands under [the provisions of] section 3 of the Act of May 16, 1934 (48 Stat. 777, 779), as amended. In all cases such person or persons

need not be [twenty-one] eighteen years of age. Such designation [must] shall be in writing, may be specified at the time of execution of such lease with a right in such lessee in similar manner to change such beneficiary at any time and shall be filed with the department and approved by the department in order to be effective to vest such interests in the successor or successors so named.

In case of the death of any lessee, except as hereinabove provided, who has failed to specify a successor or successors as approved by the department, the department may select from only the following qualified relatives of the decedent:

(1) Husband or wife;

(2) If there is no husband or wife, then the children.

The rights to the use and occupancy of the tract or tracts may be made effective as of the date of the death of such lessee.

In the case of the death of a lessee leaving no designated successor or successors, husband, wife, or children qualified to be a lessee of Hawaiian home lands, the land subject to the lease shall resume its status as

unleased Hawaiian home lands and the department is authorized to lease such land to a native Hawaiian as provided in this Act.

Upon the death of a lessee who has not designated a successor and who leaves a spouse not qualified to succeed to the lease or children not qualified to succeed to the lease, or upon the death of a lessee leaving no such relative qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall appraise the value of all such improvements and growing crops or improvements and aquacultural stock, as the case may be, and shall pay to the nonqualified spouse or the nonqualified children as the lessee shall have designated prior to the lessee's death, or to the legal representative of the deceased lessee, or the previous lessee, as the case may be, the value thereof, less any indebtedness to the department, or for taxes, or for any other indebtedness the payment of which has been assured by the department, [from] owed by the deceased lessee or the previous lessee. Such payments shall be made out of the Hawaiian home loan fund and shall be considered an advance therefrom [reimbursable out of payments made]

and shall be repaid by the successor or successors to the tract involved. If available cash in the Hawaiian home loan fund is insufficient to make such payments, payments may be advanced from the Hawaiian home general loan fund and shall be repaid by the successor or successors to the tract involved; provided that any repayment for advances made from the Hawaiian home general loan fund shall be at the interest rate established by the department for loans made from the Hawaiian home general loan fund.

Such appraisal shall be made by three appraisers, one of [which] whom shall be named by the department, one by the previous lessee or the legal representative of the deceased lessee, as the case may be, and the third shall be selected by the two appraisers [hereinbefore mentioned] aforementioned.

(b) After the cancellation of a lease by the department in accordance with [the provisions of] sections 210 and 216 of this title, or the surrender of a lease by a lessee, the department is authorized to transfer the lease or to issue a new lease to any qualified Hawaiian regardless of whether or not [he] the qualified Hawaiian is related in any way by blood or marriage to the previous lessee.

(c) Should any successor or successors to a tract be a minor or minors, the department may appoint a guardian therefor, subject to the approval of the court of proper jurisdiction. [Such] The guardian shall be authorized to represent the successor or successors in all matters pertaining to the leasehold[:]; provided[,] that [said] the guardian, [shall,] in so representing such successor or successors, shall comply with [the provisions of] this title and the stipulations and provisions contained in the lease, except that [said] the guardian need not be a native Hawaiian as defined in section 201 of this title."

SECTION 4. Section 213, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (a) to read as follows:

"(a) There are established in the treasury of the State two revolving funds, to be known respectively as the Hawaiian home loan fund and the Hawaiian home general loan fund.

(1) Hawaiian home loan fund. The moneys in this fund shall be available for the purposes enumerated in section 214 of this Act and for payments provided in section 209 and shall not be expended for any other purpose except as

provided in subsection (b)(1) [of this section].

Any interest or other earnings arising out of investments from this fund shall be credited to and deposited into the Hawaiian home operating fund.

(2) Hawaiian home general loan fund. Moneys appropriated by the legislature for the construction of homes but not otherwise set aside for a particular fund, for construction of replacement homes, for home repairs or additions, or for the development and operation of a farm, ranch, or aquaculture operation; moneys transferred from other funds; and installments of principal paid by the lessees upon loans made to them from this fund, or as payments representing reimbursements on account of advances, but not including interest on such loans or advances, shall be deposited into this fund. The moneys in the fund shall be used for purposes enumerated in section 214 of this Act[;] and for payments provided in section 209; provided that loans to lessees for repairs to their existing homes and for additions to such

homes shall not be in excess of $15,000; provided further that, in addition to the conditions enumerated in section 215, farm loans shall be subject to the following conditions: to be eligible for a farm loan the applicant shall derive, or present an acceptable plan to derive, a major portion of the applicant's income from farming; farm loans made for the purpose of soil and water conservation shall not exceed $20,000 and shall be for a term not to exceed ten years. Subsidies and grants or cost-sharing funds entitled and received by the lessee for soil and water conservation purposes shall be assigned to the department for the repayment of the outstanding farm indebtedness; and the lessee shall carry out recommended farm management practices approved by a qualified agricultural agency.

(A) The department may create an account within this fund to support the guarantee of repayment of loans made by government agencies or private lending institutions to a holder of a lease under section 207(a) of

this Act or license issued under section 207(c)(1)(B) of this Act.

(B) The department may create an account within this fund for moneys borrowed from government agencies or private lending institutions to be used for any of the purposes enumerated in section 214 of this Act. Installments of principal and that part of the interest equal to the interest charged to the department by the lender paid by the lessees on the loans made to them from this account shall be deposited into the same account; any additional interest or other earnings arising out of investments from this account shall be credited to and deposited into the Hawaiian home receipts fund."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

Approved by the Governor

on MAY 11 1987

E1440
HRO/1419m

ACT 28

SECTION 2. Section 171-2, Hawaii Revised Statutes, is amended to read as follows:

"§171-2 Definition of public lands. "Public lands" means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including submerged lands, and lands beneath tidal waters which are suitable for reclamation, together with reclaimed lands which have been given the status of public lands under this chapter, except:

(1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;
(2) Lands set aside pursuant to law for the use of the United States;
(3) Lands being used for roads and streets;
(4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the State Constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
(5) Lands to which the University of Hawaii holds title;
(6) Lands to which the Hawaii housing authority in its corporate capacity holds title;
(7) Lands to which the Hawaii community development authority in its corporate capacity holds title; [and]
(8) Lands to which the housing finance and development corporation in its corporate capacity holds title[.]; and
(9) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 21, 1999.)

ACT 28 H.B. NO. 1904

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 214, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (b) to read as follows:

"(b) In addition the department may:

(1) Use moneys in the Hawaiian home operating fund, with the prior approval of the governor, to match federal, state, or county funds available for the same purposes and to that end, enter into such undertaking, agree to such conditions, transfer funds therein available

for such expenditure, and do and perform such other acts and things, as may be necessary or required, as a condition to securing matching funds for such projects or works;

(2) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof[, up to a maximum of $50,000] to lessees in accordance with section 215;

(3) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof to a cooperative association in accordance with section 215;

(4) Permit and approve loans made to lessees by government agencies or private lending institutions, where the department assures the payment of such loans; provided that upon receipt of notice of default in the payment of such assured loans, the department may, upon failure of the lessee to cure the default within sixty days, cancel the lease and pay the outstanding balance in full or may permit the new lessee to assume the outstanding debt; and provided further that the department shall reserve the following rights: the right of succession to the lessee's interest and assumption of the contract of loan; the right to require that written notice be given to the department immediately upon default or delinquency of the lessee; and any other rights enumerated at the time of assurance necessary to protect the monetary and other interests of the department;

(5) Secure, pledge, or otherwise guarantee the repayment of moneys borrowed by the department from government agencies or private lending institutions and pay the interim interest or advances required for loans; provided that the State's liability, contingent or otherwise, either on moneys borrowed by the department or on departmental guarantees of loans made to lessees under this paragraph and paragraphs (2), (3), and (4) of this subsection, shall at no time exceed $21,000,000; the department's guarantee of repayment shall be adequate security for a loan under any state law prescribing the nature, amount, or form of security or requiring security upon which loans may be made;

(6) Use available loan fund moneys or other funds specifically available for such purposes as cash guarantees when required by lending agencies;

(7) Exercise the functions and reserved rights of a lender of money or mortgagee of residential property in all direct loans made by government agencies or by private lending institutions to lessees the repayment of which is assured by the department. The functions and reserved rights shall include but not be limited to, the purchasing, repurchasing, servicing, selling, foreclosing, buying upon foreclosure, guaranteeing the repayment, or otherwise underwriting, of any loan, the protecting of security interest, and after foreclosures, the repairing, renovating, or modernization and sale of property covered by the loan and mortgage;

(8) Pledge receivables of loan accounts outstanding as collateral to secure loans made by government agencies or private lending institutions to the department, the proceeds of which shall be used by the department to make new loans to lessees or to finance the development of available lands for purposes permitted by this Act; provided that any loan agreement entered into under this paragraph by the department shall include a provision that the money borrowed by the department is not secured directly or indirectly by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the

receivables specifically pledged to repay the loan; provided further that in making loans or developing available lands out of money borrowed under this paragraph, the department may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, to assure repayment of the funds borrowed, and the fees, premiums, and charges shall be deposited into the Hawaiian home trust fund; and provided further that no moneys of the Hawaiian home loan fund may be pledged as security under this paragraph; and

(9) Notwithstanding any other provisions of this Act to the contrary, transfer into the Hawaiian home trust fund any available and unpledged moneys from any loan funds, the Hawaiian loan guarantee fund, or any fund or account succeeding thereto, except the Hawaiian home loan fund, for use as cash guarantees or reserves when required by a federal agency authorized to insure or guarantee loans to lessees."

SECTION 2. Section 215, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

"§215. Conditions of loans. Except as otherwise provided in section [213(a)(5)] 213(a)(2), each contract of loan with the lessee or any successor or successors to [his] the lessee's interest in the tract or with any agricultural, mercantile, or aquacultural cooperative association composed entirely of lessees shall be held subject to the following conditions whether or not stipulated in the contract loan:

(1) At any one time, the outstanding amount of loans made to any lessee, or successor or successors in interest, for the repair, maintenance, purchase, and erection of a dwelling and related permanent improvements shall not exceed [$50,000,] fifty per cent of the maximum single residence loan amount allowed in Hawaii by the United States Department of Housing and Urban Development's Federal Housing Administration (FHA), for the development and operation of a farm, ranch, or aquaculture operation shall not exceed $50,000, except that when loans are made to an agricultural or aquacultural cooperative association for the purposes stated in section 214(a)(4), the loan limit shall be determined by the department on the basis of the proposed operations and the available security of the association, and for the development and operation of a mercantile establishment shall not exceed the loan limit determined by the department on the basis of the proposed operations and the available security of the lessee or of the organization formed and controlled by lessees; provided that upon the death of a lessee leaving no relative qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall make the payment provided for by section 209(a), the amount of any such payment [made to the legal representative of the deceased lessee, or to the previous lessee, as the case may be,] shall be considered as part or all, as the case may be, of any such loan to the successor or successors, without limitation as to the above maximum amounts; provided further that in case of death of a lessee, or cancellation of a lease by the department, or the surrender of a lease by the lessee, the successor or successors to the tract shall assume any outstanding loan or loans thereon, if any, without limitation as to the above maximum amounts but subject to paragraph (3).

(2) The loans shall be repaid in periodic installments, such installments to be monthly, quarterly, semiannual, or annual as may be determined by the department in each case. The term of any loan shall not exceed thirty years. Payments of any sum in addition to the required installments, or payment of the entire amount of the loan, may be made at any time within the term of the loan. All unpaid balances of principal shall bear interest at the rate of two and one-half per cent a year for loans made directly from the Hawaiian home loan fund, or at the rate of two and one-half per cent or higher as established by law for other loans, payable periodically or upon demand by the department, as the department may determine. The payment of any installment due shall be postponed in whole or in part by the department for such reasons as it deems good and sufficient and until such later date as it deems advisable. Such postponed payments shall continue to bear interest on the unpaid principal at the rate established for the loan.

(3) In the case of the death of a lessee the department shall, in any case, permit the successor or successors to the tract to assume the contract of loan subject to paragraph (1). In case of the cancellation of a lease by the department or the surrender of a lease by the lessee, the department may, at its option declare all installments upon the loan immediately due and payable, or permit the successor or successors to the tract to assume the contract of loan subject to paragraph (1). The department may, in such cases where the successor or successors to the tract assume the contract of loan, waive the payment, wholly or in part, of interest already due and delinquent upon the loan, or postpone the payment of any installment thereon, wholly or in part, until such later dates as it deems advisable. Such postponed payments shall, however, continue to bear interest on the unpaid principal at the rate established for the loan. Further, the department may, if it deems it advisable and for the best interests of the lessees, write off and cancel, wholly or in part, the contract of loan of the deceased lessee, or previous lessee, as the case may be, where such loans are delinquent and deemed uncollectible. Such write off and cancellation shall be made only after an appraisal of all improvements and growing crops or improvements and aquaculture stock, as the case may be, on the tract involved, such appraisal to be made in the manner and as provided for by section [210.5] 209(a). In every case, the amount of such appraisal, or any part thereof, shall be considered as part or all, as the case may be, of any loan to such successor or successors, subject to paragraph (1).

(4) No part of the moneys loaned shall be devoted to any purpose other than those for which the loan is made.

(5) The borrower or the successor to his interest shall comply with such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the contract of loan.

(6) The borrower or the successor to his interest shall comply with the conditions enumerated in section 208, and with section 209 of this Act in respect to the lease of any tract.

(7) Whenever the department shall determine that a borrower is delinquent in the payment of any indebtedness to the department, it may require such borrower to execute an assignment to it, not to exceed, however, the amount of the total indebtedness of such borrower, including the indebtedness to others the payment of which has been assured by the department of all moneys due or to become due to such borrower by

reason of any agreement or contract, collective or otherwise, to which the borrower is a party. Failure to execute such an assignment when requested by the department shall be sufficient ground for cancellation of the borrower's lease or interest therein."

SECTION 3. The provisions of this amendment are declared to be severable, and if any section, sentence, clause or phrase, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect then, that portion only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of this amendment or the application thereof shall not be affected.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 21, 1989.)

ACT 265 H.B. NO. 886

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to mandate the appointment of an additional member of the Hawaiian homes commission from the county of Hawaii. More than one-third of Hawaiian home lands is situated on the county of Hawaii. Since there is significantly more Hawaiian home lands on the county of Hawaii than on any other county, the legislature finds it would be more equitable and in the public interest to have at least two members who are residents of the county of Hawaii on the commission, of which one member shall be a resident of east Hawaii and the other member shall be a resident of west Hawaii.

SECTION 2. Section 202, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (a) to read as follows:

"(a) There shall be a department of Hawaiian home lands which shall be headed by an executive board to be known as the Hawaiian homes commission. The members of the commission shall be nominated and appointed in accordance with section 26-34, Hawaii Revised Statutes. The commission shall be composed of [eight] nine members, as follows: three shall be residents of the city and county of Honolulu; [one] two shall be [a resident] residents of the county of Hawaii[;] one of whom shall be a resident of east Hawaii and the other a resident of west Hawaii; two shall be residents of the county of Maui one of whom shall be a resident from the island of Molokai; one shall be a resident of the county of Kauai; and the [eighth] ninth member shall be the chairman of the Hawaiian Homes Commission. All members shall have been residents of the State at least three years prior to their appointment and at least four of the members shall be descendants of not less than one-fourth part of the blood of the races inhabiting the Hawaiian islands previous to 1778. The members of the commission shall serve without pay, but shall receive actual expenses incurred by them in the discharge of their duties as such members. The governor shall appoint the chairman of the commission from among the members thereof.

The commission may delegate to the chairman such duties, powers, and authority or so much thereof, as may be lawful or proper for the performance of the functions vested in the commission. The chairman of the commission shall serve in a full-time capacity. He shall, in such capacity, perform such duties, and exercise such powers and authority, or so much thereof, as may be delegated to him by the commission as herein provided above."

SECTION 3. Section 26-17, Hawaii Revised Statutes, is amended to read as follows:

"The[1] department of Hawaiian home lands shall be headed by an executive board to be known as the Hawaiian homes commission.

The commission shall be composed of [eight] nine members. The appointment, tenure, and removal of the members and the filling of vacancies on the commission shall be in accordance with section 26-34 and section 202(a) of the Hawaiian Homes Commission Act of 1920, as amended. The governor shall appoint the chairman of the commission from among the members thereof.

The commission may delegate to the chairman such duties, powers, and authority, or so much thereof as may be lawful or proper, for the performance of the functions vested in the commission.

The chairman of the board shall serve in a full time capacity and shall perform such duties, and exercise such powers and authority, or so much thereof as may be delegated to the chairman by the board.

The department shall administer the Hawaiian Homes Commission Act of 1920 as set forth in the Constitution of the State and by law.

The functions and authority heretofore exercised by the Hawaiian homes commission as heretofore constituted are transferred to the department of Hawaiian home lands established by this chapter."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. The provisions of the amendments made by this Act to the Hawaiian Homes Commission Act, 1920, as amended, are declared to be severable, and if any section, sentence, clause, or phrase, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect, then that portion only shall take effect upon the granting of consent by the United States and effectiveness of the remainder of these amendments or the application thereof shall not be affected.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 8, 1989.)

Note

1. So in original.

THE SENATE
FIFTEENTH LEGISLATURE, 1990
STATE OF HAWAII

S.B. NO. 2700 S.D. 1

ACT 14

A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 204, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

"§204. Control by department of "available lands," return to board of land and natural resources, when[.]; other lands, use of. (a) Upon the passage of this Act, all available lands shall immediately assume the status of Hawaiian home lands and be under the control of the department to be used and disposed of in accordance with the provisions of this Act, except that:

(1) In case any available land is under lease by the Territory of Hawaii, by virtue of section 73 of the Hawaiian Organic Act, at the time of the passage of this Act, such land shall not assume the status of Hawaiian home lands until the lease expires or the board of land and natural resources withdraws the lands from the operation of the lease. If the land is covered by a lease containing a withdrawal clause, as provided in section 73(d) of the Hawaiian Organic Act, the board of land and natural resources shall withdraw such lands from the operation of the lease whenever the department

gives notice to the board that the department is of the opinion that the lands are required by it for the purposes of this Act; and such withdrawal shall be held to be for a public purpose within the meaning of that term as used in section 73(d) of the Hawaiian Organic Act.

(2) Any available land, including lands selected by the department out of a larger area, as provided by this Act, not leased as authorized by section 207(a) of this Act, may be returned to the board of land and natural resources as provided under section 212 of this Act, or may be retained for management by the department. Any Hawaiian home lands general lease issued by the department after June 30, 1985, shall contain a withdrawal clause allowing the department to withdraw the land leased at any time during the term of the lease for the purposes of this Act.

In the management of any retained available lands not required for leasing under section 207(a), the department may dispose of those lands to the public, including native Hawaiians, on the same terms, conditions, restrictions, and uses applicable to the disposition of public lands in chapter 171, Hawaii

Revised Statutes; provided that the department may not sell or dispose of such lands in fee simple except as authorized under section 205 of this Act; provided further that the department is expressly authorized to negotiate, prior to negotiations with the general public, the disposition of a lease of Hawaiian home lands to a native Hawaiian, or organization or association owned or controlled by native Hawaiians, for commercial, industrial, or other business purposes, in accordance with the procedure set forth in section 171-59, Hawaii Revised Statutes, subject to the notice requirement of section 171-16(c), Hawaii Revised Statutes, and the lease rental limitation imposed by section 171-17(b), Hawaii Revised Statutes.

(3) The department, with the approval of the Secretary of the Interior, in order to consolidate its holdings or to better effectuate the purposes of this Act, may exchange the title to available lands for land, privately or publicly owned, of an equal value. All lands so acquired by the department shall assume the status of available lands as though the land were originally designated as available lands under section 203 of this Act, and all lands so conveyed by the department shall

assume the status of the land for which it was exchanged. The limitations imposed by section 73(1) of the Hawaiian Organic Act and the land laws of Hawaii as to the area and value of land that may be conveyed by way of exchange shall not apply to exchanges made pursuant hereto. No such exchange of land publicly owned by the State shall be made without the approval of two-thirds of the members of the board of land and natural resources. For the purposes of this paragraph, lands "publicly owned" means land owned by a county or the State or the United States.

(b) Unless expressly provided elsewhere in this Act, lands or an interest therein acquired by the department pursuant to section 213(b)(1), 221(c), or 225(b), or any other section of this Act authorizing the department to acquire lands or an interest therein, may be managed and disposed of in the same manner and for the same purposes as Hawaiian homelands."

SECTION 2. The provisions of the amendments made by this Act to the Hawaiian Homes Commission Act, 1920, as amended, are declared to be severable and, if any section, sentence, clause, or phrase, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect, then that portion

only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of these amendments or the application thereof shall not be affected.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

Approved by the Governor on APR 17 1990

H B. NO. 2487

APR 20 11 52 A '90

ACT 24

A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 221, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

"§221. Water. (a) When used in this section:

(1) The term "water license" means any license issued by the board of land and natural resources granting to any person the right to the use of government-owned water; and

(2) The term "surplus water" means so much of any government-owned water covered by a water license or so much of any privately owned water as is in excess of the quantity required for the use of the licensee or owner, respectively.

(b) All water licenses issued after the passage of this Act shall be deemed subject to the condition, whether or not stipulated in the license, that the licensee shall, upon the demand of the department, grant to it the right to use, free of all charge, any water which the department deems necessary

HHL-3(90)

adequately to supply the livestock, aquaculture operations, agriculture operations, or domestic needs of individuals upon any tract.

(c) In order adequately to supply livestock, the aquaculture operations, the agriculture operations, or the domestic needs of individuals upon any tract, the department is authorized (1) to use, free of all charge, government-owned water not covered by any water license or covered by a water license issued after the passage of this Act or covered by a water license issued previous to the passage of this Act but containing a reservation of such water for the benefit of the public, and (2) to contract with any person for the right to use or to acquire, under eminent domain proceedings similar, as near as may be, to the proceedings provided in respect to land by sections 101-10 to 101-34, Hawaii Revised Statutes, the right to use any privately owned surplus water or any government-owned surplus water covered by a water license issued previous to the passage of this Act, but not containing a reservation of such water for the benefit of the public. Any such requirement shall be held to be for a public use and purpose. The department may institute the eminent domain proceedings in its own name.

(d) The department is authorized, for the additional

purpose of adequately irrigating any tract, to use, free of all charge, government-owned surplus water tributary to the Waimea river upon the island of Kauai, not covered by a water license or covered by a water license issued after July 9, 1921. Any water license issued after that date and covering any such government-owned water shall be deemed subject to the condition, whether or not stipulated therein, that the licensee shall, upon the demand of the department, grant to it the right to use, free of all charge, any of the surplus water tributary to the Waimea river upon the island of Kauai, which is covered by the license and which the department deems necessary for the additional purpose of adequately irrigating any tract.

Any funds which may be appropriated by Congress as a grant-in-aid for the construction of an irrigation and water utilization system on the island of Molokai designed to serve Hawaiian home lands, and which are not required to be reimbursed to the federal government, shall be deemed to be payment in advance by the department and lessees of the department of charges to be made to them for the construction of such system and shall be credited against such charges when made.

(e) All rights conferred on the department by this section to use, contract for, or acquire the use of water shall

be deemed to include the right to use, contract for, or acquire the use of any ditch or pipeline constructed for the distribution and control of such water and necessary to such use by the department.

(f) Water systems in the exclusive control of the department shall remain under its exclusive control; provided that the department may negotiate an agreement to provide for the maintenance of the water system and the billing and collection of user fees. If any provision or the application of that provision is inconsistent with provisions contained in this section, this section shall control.

Water systems include all real and personal property together with all improvements to such systems acquired or constructed by the department for the distribution and control of water for domestic or agricultural use."

SECTION 2. The provisions of this amendment are declared to be severable and, if any section, sentence, clause, or phrase or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect, then, that portion only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of this amendment or the application thereof

shall not be affected.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

Approved by the Governor on APR 17 1990

JO

HOUSE OF REPRESENTATIVES
FIFTEENTH LEGISLATURE, 1990
STATE OF HAWAII

H.B. NO. 2984 H.D. 1 S.D. 1 C.D. 1

ACT 150

A BILL FOR AN ACT

RELATING TO KALAWAHINE LANDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that, pursuant to S.C.R. No. 180, S.D. 1, which was adopted by both houses during the regular session of 1989, the State has finalized an assessment of the legal disposition and possible uses of Kalawahine, Oahu. The purpose of this Act is to effectuate disposition of these lands.

SECTION 2. Except as otherwise provided in SECTION 5, the department of land and natural resources is hereby authorized to negotiate and enter into long-term residential leases not to exceed sixty-five years in duration with persons who meet the following criteria:

(1) On the date of enactment of this Act, reside on parcel 8 of tax map key no. 2-4-34, or have valid permits allowing them to reside on this land, or are descendants of persons who resided on this land before May 16, 1934; and

(2) Currently have homes on this land for use as their own residences; and

(3) Can prove that the various governments of Hawaii have expressed an intent to grant them long-term tenure.

SECTION 3. Any other law to the contrary notwithstanding, including chapter 171, Hawaii Revised Statutes, the department of land and natural resources is hereby authorized to negotiate and enter into lease agreements in accordance with the provisions and limitations of this Act provided that the authority granted by this Act shall expire:

(1) When leases have been negotiated and recorded in the bureau of conveyances with, or the requests authorized by SECTION 5 have been filed and approved for, all persons meeting the criteria in SECTION 2; or

(2) On January 1, 1992,

whichever is first.

SECTION 4. The land leased to each person under SECTION 2 of this Act shall be determined by the department of land and natural resources, pursuant to any applicable guidelines for residential leases and rules established by the department.

SECTION 5. Structures permitted on land for which long-term residential leases are granted under SECTION 2 of this Act shall be limited to structures in existence on November 3, 1988, or replacement structures of approximately the same size.

SECTION 6. Any person who meets the criteria in SECTION 2 and can prove that the person was given a right of first opportunity to lease other similar lands under the control of the department of Hawaiian home lands pursuant to Section 3 of the Act of May 16, 1934, Public Law No. 277, 48 Stat. 779, Chapter 200, as amended by Section 3 of the Act of July 9, 1952, Public Law No. 481, 66 Stat. 513, Chapter 614, or can prove that the person is a descendant of a person who was given a right of first opportunity, whether or not the right was exercised, may elect, before July 1, 1991, to have the land upon which the person resides transferred to the department of Hawaiian home lands by filing a written request, accompanied by the requisite proof, with the department of land and natural resources. Upon the filing and approval of the written request, the department of land and natural resources shall immediately transfer title to the land, as determined pursuant to SECTION 4 of this Act, to the department of Hawaiian home lands, without cost, and the land shall be deemed to have the status of Hawaiian home lands. The person making the request shall be granted a lease for the land in accordance with section 208 of the Hawaiian Homes Commission Act, 1920, as amended, notwithstanding the limitation on leasing of lands to native Hawaiians in item (1) of section 208.

SECTION 7. Section 203, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

"§203. [[]]**Certain public lands designated "available lands."**[]] All public lands of the description and acreage, as follows, excluding (a) all lands within any forest reservation, (b) all cultivated sugar-cane lands, and (c) all public lands held under a certificate of occupation, homestead lease, right of purchase lease, or special homestead agreement, are hereby designated, and hereinafter referred to, as "available lands":

(1) On the island of Hawaii: Kamaoa-Puueo (eleven thousand acres, more or less), in the district of Kau; Puukapu (twelve thousand acres, more or less), Kawaihae 1 (ten thousand acres, more or less), and Pauahi (seven hundred and fifty acres, more or less), in the district of South Kohala; Kamoku-Kapulena (five thousand acres, more or less), Waimanu (two hundred acres, more or less), Nienie (seven thousand three hundred and fifty acres, more or less), in the district of Hamakua; fifty-three thousand acres to be selected by the department from the lands of Humuula Mauka, in the district of North Hilo; Panaewa, Waiakea (two thousand acres, more or less), Waiakea-kai, or Keaukaha (two thousand acres, more or less), and two thousand acres of agricultural lands to be selected by the department from the

lands of Piihonua, in the district of South Hilo; and two thousand acres to be selected by the department from the lands of Kaohe-Makuu, in the district of Puna; land at Keaukaha, Hawaii, more particularly described as follows:

PARCEL I

Now set aside as Keaukaha Beach Park by Executive Order Numbered 421, and being a portion of the Government land at Waiakea, South Hilo, Hawaii.

Beginning at the southeast corner of this parcel of land, on the north side of Kalanianaole Road, the coordinates of said point of beginning referred to Government survey triangulation station "Halai" being five thousand six hundred and eighty-one and twelve one-hundredths feet north and seventeen thousand nine hundred and thirty-three and fifteen one-hundredths feet east, as shown on Government Survey Registered Map Numbered 2704, and running by true azimuths.

1. Sixty-one degrees fifty-eight minutes one thousand three hundred and fifty-one and seventy-three one-hundredths feet along the north side of Kalanianaole Road (fifty feet wide);

2. One hundred and fifty-one degrees fifty-eight minutes eight hundred and forty feet along United States military

reservation for river and harbor improvements (Executive Order Numbered 176);

Thence along the seashore at high-water mark, the direct azimuths and distances between points at seashore being:

3. Two hundred and eighty-two degrees no minutes four hundred and sixty-eight and fifty one-hundredths feet;

4. Three hundred and thirteen degrees twenty minutes four hundred and forty-one feet;

5. Two hundred and sixty degrees twenty minutes one hundred and forty feet;

6. Two hundred and forty-two degrees twenty minutes two hundred and fifty feet;

7. One hundred and eighty-eight degrees forty minutes sixty feet;

8. Two hundred and seventy-two degrees twenty minutes one hundred and seventy feet;

9. Two hundred and five degrees no minutes sixty feet;

10. One hundred and ten degrees twenty minutes two hundred and twenty feet;

11. Ninety degrees fifty minutes eighty feet;

12. One hundred and sixty-two degrees no minutes one hundred and seventy feet;

13. Two hundred and fifty degrees thirty minutes four hundred and thirty feet;

14. Three hundred and thirty-one degrees fifty-eight minutes three hundred and eighty feet along parcel II of Government land to the point of beginning and containing an area of eleven and twenty one-hundredths acres, more or less.

PARCEL II

Being a portion of the Government land of Waiakea, South Hilo, Hawaii, and located on the north side of Kalanianaole Road and adjoining parcel I, hereinbefore described.

Beginning at the south corner of this parcel of land, on the north side of Kalanianaole Road, the coordinates of said point of beginning referred to Government survey triangulation station "Halai," being five thousand six hundred and eighty-one and twelve one-hundredths feet north and seven thousand nine hundred and thirty-three and fifteen one-hundredths feet east and running by true azimuths:

1. One hundred and fifty-one degrees fifty-six minutes three hundred and eighty feet along the east boundary of parcel I;

2. Two hundred and twenty-nine degrees forty-five minutes thirty seconds one hundred and ninety-one and one one-hundredths feet;

3. One hundred and ninety-eight degrees no minutes two hundred and thirty feet to a one-and-one-half inch pipe set in concrete;

4. Three hundred and seven degrees thirty-eight minutes five hundred and sixty-two and twenty-one one-hundredths feet to a one-and-one-half inch pipe set in concrete;

5. Twenty-eight degrees no minutes one hundred and twenty-one and thirty-seven one-hundredths feet to the north side of Kalanianaole Road;

6. Sixty-one degrees fifty-eight minutes four hundred and eighty-three and twenty-two one-hundredths feet along the north side of Kalanianaole Road to the point of beginning and containing an area of five and twenty-six one-hundredths acres, more or less.

(2) On the island of Maui: Kahikinui (twenty-five thousand acres, more or less) in the district of Kahikinui, and the public lands (six thousand acres, more or less) in the district of Kula;

(3) On the island of Molokai: Palaau (eleven thousand four hundred acres, more or less), Kapaakea (two thousand acres, more

or less), Kalamaula (six thousand acres, more or less), Hoolehua (three thousand five hundred acres, more or less), Kamiloloa I and II (three thousand six hundred acres, more or less), and Makakupaia (two thousand two hundred acres, more or less) and Kalaupapa (five thousand acres, more or less);

(4) On the island of Oahu: Nanakuli (three thousand acres, more or less), and Lualualei (two thousand acres, more or less), in the District of Waianae; and Waimanalo (four thousand acres, more or less), in the District of Koolaupoko, excepting therefrom the military reservation and the beach lands; and those certain portions of the lands of Auwaiolimu, Kewalo, and Kalawahine described by metes and bounds as follows, to-wit:

(I) Portion of the Government land at Auwaiolimu, Punchbowl Hill, Honolulu, Oahu, described as follows:

Beginning at a pipe at the southeast corner of this tract of land, on the boundary between the lands of Kewalo and Auwaiolimu, the coordinates of said point of beginning referred to Government Survey triangulation station "Punchbowl," being one thousand one hundred and thirty-five and nine-tenths feet north and two thousand five hundred and fifty-seven and eight-tenths feet east as shown on Government Survey Registered Map Numbered 2692, and running by true azimuths:

1. One hundred and sixty-three degrees thirty-one minutes two hundred and thirty-eight and eight-tenths feet along the east side of Punchbowl-Makiki Road;

2. Ninety-four degrees eight minutes one hundred and twenty-four and nine-tenths feet across Tantalus Drive and along the east side of [Puuowaina] Puowaina Drive;

3. One hundred and thirty-one degrees thirteen minutes two hundred and thirty-two and five-tenths feet along a twenty-five foot roadway;

4. One hundred and thirty-nine degrees fifty-five minutes twenty and five-tenths feet along same;

5. One hundred and sixty-eight degrees seventeen minutes two hundred and fifty-seven and eight-tenths feet along Government land (old quarry lot);

6. One hundred and fifty-six degrees thirty minutes three hundred and thirty-three feet along same to a pipe;

7. Thence following the old Auwaiolimu stone wall along L.C. Award Numbered 3145, to Laenui, grant 5147 (lot 8 to C.W. Booth), L.C. Award Numbered 1375, to Kapule, and L.C. Award Numbered 1355, to Kekuanoni, the direct azimuth and distance being two hundred and forty-nine degrees forty-one minutes one thousand three hundred and three and five-tenths feet;

8. Three hundred and twenty-one degrees, twelve minutes, six hundred and ninety-three feet along the remainder of the land of Auwaiolimu;

9. Fifty-one degrees, twelve minutes, one thousand and four hundred feet along the land of Kewalo to the point of beginning, containing an area of twenty-seven acres, excepting and reserving therefrom Tantalus Drive and Auwaiolimu Street crossing this land.

(II) Portion of the land of Kewalo, Punchbowl Hill, Honolulu, Oahu, being part of the lands set aside for the use of the Hawaii Experiment Station of the United States Department of Agriculture by proclamation of the Acting Governor of Hawaii, dated June 10, 1901, and described as follows:

Beginning at the northeast corner of this lot, at a place called "Puu Ea" on the boundary between the lands of Kewalo and Auwaiolimu, the coordinates of said point of beginning referred to Government survey triangulation station "Punchbowl," being three thousand two hundred and fifty-five and six-tenths feet north and five thousand two hundred and forty-four and seven-tenths feet east, as shown on Government Survey Registered Map Numbered 2692 of the State of Hawaii, and running by true azimuths:

1. Three hundred and fifty-four degrees thirty minutes nine hundred and thirty feet along the remainder of the land of Kewalo, to the middle of the stream which divides the lands of Kewalo and Kalawahine;

2. Thence down the middle of said stream along the land of Kalawahine, the direct azimuth and distance being forty-nine degrees sixteen minutes one thousand five hundred and twelve and five-tenths feet;

3. One hundred and forty-one degrees twelve minutes eight hundred and sixty feet along the remainder of the land of Kewalo;

4. Two hundred and thirty-one degrees twelve minutes five hundred and fifty-two and six-tenths feet along the land of Auwaiolimu to "PUU IOLE";

5. Thence still along the said land of Auwaiolimu following the top of the ridge to the point of beginning, the direct azimuth and distance being two hundred and thirty-two degrees twenty-six minutes one thousand four hundred and seventy feet and containing an area of thirty acres; excepting and reserving therefrom Tantalus Drive crossing this land;

[[(III) Repealed. Act of Jul. 9, 1952, c 614, §1, 66 Stat 511]].

(III) Portion of the land of Kalawahine makai of Tantalus

Drive consisting of twelve acres, more or less, said parcel described more specifically in tax map key 2-4-34-3, which includes certain parcels adjoining the Ewa portion of Kalawahine Place currently occupied by short-term land dispositions if the persons residing on those parcels meet the qualifications established by the Legislature of the State of Hawaii and elect to have the land under their homes transferred to the department, and certain portions of the Ewa portion of the parcel, but excluding the hillside side portions of the southeast parcel, with metes and bounds designated by the department and approved by the department of land and natural resources; provided that persons now residing on portion of the land described, be given first opportunity to lease the lands on which they now reside, for a term of 99 years, whether or not they be native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920, as amended.

(IV) Portion of the Hawaii Experiment Station under the control of the United States Department of Agriculture, situated on the northeast side of Auwaiolimu Street.

KEWALO-UKA, HONOLULU, OAHU

Being a portion of the land of Kewalo-uka conveyed by the Territory of Hawaii to the United States of America by

proclamations of the Acting Governor of Hawaii, Henry S. Cooper, dated June 10, 1901, and August 16, 1901, and a portion of the United States Navy Hospital reservation described in Presidential Executive Order Numbered 1181, dated March 25, 1910.

Beginning at the west corner of this parcel of land, on the Auwaiolimu-Kewalo-uka boundary and on the northeast side of Auwaiolimu Street, the coordinates of said point of beginning referred to Government survey triangulation station "Punchbowl," being one thousand two hundred and thirty and fifty-eight one-hundredths feet north and two thousand six hundred and seventy-five and six one-hundredths feet east as shown on Government Survey Registered Map Numbered 2985 and running by azimuths measured clockwise from true south:

1. Two hundred and thirty-one degrees twelve minutes one thousand two hundred and forty-eight and twenty-six one-hundredths feet along the land of Auwaiolimu;

2. Three hundred and twenty-one degrees twelve minutes eight hundred and sixty feet along Hawaiian home land as described in Presidential Executive Order Numbered 5561;

3. Thence down along the middle of stream in all its turns and windings along the land of Kalawahine to the north corner of Roosevelt High School lot, the direct azimuth and distance being

thirty-three degrees forty-eight minutes forty seconds one thousand one hundred and twelve and twenty one-hundredths feet;

Thence still down along the middle of stream for the next seven courses along the Roosevelt High School premises, the direct azimuth and distances between points in middle of said stream being:

4. Twenty-three degrees forty minutes twenty-eight and ninety one-hundredths feet;

5. Eight degrees no minutes one hundred and fifteen feet;

6. Three hundred and thirty-seven degrees fifty minutes forty-eight feet;

7. Two degrees thirty minutes sixty feet;

8. Forty-nine degrees forty minutes fifty-two feet,

9. Forty-six degrees six minutes ninety and seventy one-hundredths feet;

10. Ninety-two degrees forty-three minutes ninety-five and sixty one-hundredths feet; thence

11. Eighty-three degrees thirty-eight minutes seventy-one and sixty-three one-hundredths feet along state land to the northeast side of Auwaiolimu Street;

12. Thence on a curve to the left with a radius of one thousand one hundred and seventy-six and twenty-eight

one-hundredths feet along the northeast side of Auwaiolimu Street along land described in Presidential Executive Order Numbered 1181, dated March 25, 1910, the direct azimuth and distance being one hundred and seventy-two degrees twenty-nine minutes thirty-five seconds one hundred and sixty-four and thirty-nine one-hundredths feet;

13. Thence continuing on a curve to the left with a radius of one thousand one hundred and seventy-six and twenty-eight one-hundredths feet along the northeast side of Auwaiolimu Street, the direct azimuth and distance being one hundred and sixty degrees fifty minutes forty-eight seconds three hundred and twelve and seventy-five one-hundredths feet;

14. Two hundred and twenty-four degrees fifty-three minutes six hundred and seventy and sixty-five one-hundredths feet along the Quarry Reservation (State of Hawaii, owner);

15. One hundred and ten degrees six minutes two hundred and thirty-nine and twenty one-hundredths feet along same;

16. Ninety-two degrees five minutes two hundred and two and twenty one-hundredths feet along same;

17. Fifty-three degrees twenty minutes three hundred and forty and thirty-four one-hundredths feet along same;

19. One hundred and forty-two degrees thirty minutes four hundred and twenty-four and sixty-eight one-hundredths feet along the northeast side of Auwaiolimu Street to the point of beginning and containing an area of twenty-seven and ninety one-hundredths acres; excepting and reserving therefrom that certain area included in Tantalus Drive, crossing this land.

(V) Portion of Kewalo-uka Quarry Reservation. Situate on the northeast side of Auwaiolimu Street.

KEWALO-UKA, HONOLULU, OAHU

Being land reserved by the State of Hawaii within the Hawaii Experiment Station under the control of the United States Department of Agriculture, as described in proclamations of the Acting Governor of Hawaii, Henry E. Cooper, dated June 10, 1901.

Beginning at the northwest corner of this parcel of land and on the northeast side of Auwaiolimu Street, the coordinates of said point of beginning referred to Government survey triangulation station "Punchbowl," being eight hundred and ninety-three and sixty-six one-hundredths feet north and two thousand nine hundred and thirty-three and fifty-nine one-hundredths feet east as shown on Government Survey Registered Map Numbered 2985 and running by azimuths measured clockwise from true south:

1. Two hundred and thirty-three degrees twenty minutes
2 three hundred and forty and thirty-four one-hundredths feet along
3 the Hawaii Experiment Station under the control of the United
4 States Department of Agriculture;
5 2. Two hundred and seventy-two degrees five minutes two
6 hundred and two and twenty one-hundredths feet along same;
7 3. Two hundred and ninety degrees six minutes two hundred
8 and thirty-nine and twenty one-hundredths feet along same;
9 4. Forty-four degrees fifty-three minutes six hundred and
10 seventy and sixty-five one-hundredths feet along same to the
11 northeast side of Auwaiolimu Street;
12 5. Thence on a curve to the left with a radius of one
13 thousand one hundred and seventy-six and twenty-eight
14 one-hundredths feet along the northeast side of Auwaiolimu
15 Street, the direct azimuth and distance being one hundred and
16 forty-seven degrees fifty-one minutes thirteen seconds two
17 hundred and nineteen and fifty one-hundredths feet;
18 6. One hundred and forty-two degrees thirty minutes one
19 hundred and thirty-four and fifty-five one-hundredths feet along
20 the northeast side of Auwaiolimu Street;
21 7. Two hundred and thirty-two degrees thirty minutes twenty
22 feet along same;

9. One hundred and forty-two degrees thirty minutes seventy-one and fifty-seven one-hundredths feet along same to the point of beginning and containing an area of four and six hundred and forty-six one-thousandths acres.

(VI) Being a portion of government land of Auwaiolimu, situated on the northeast side of Hawaiian home land of Auwaiolimu and adjacent to the land of Kewalo-uka at Pauoa Valley, Honolulu, Oahu, State of Hawaii. Beginning at a pipe in concrete at the south corner of this parcel of land, being also the east corner of Hawaiian home land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Punchbowl," being two thousand twelve and seventy-five one-hundredths feet south and three thousand six hundred forty-seven and eighty-seven one-hundredths feet east, and thence running by azimuths measured clockwise from true south:

1. One hundred and forty-one degrees twelve minutes six hundred and ninety-three feet along Hawaiian home land;

2. Thence along middle of stone wall along L.C.Aw. 1356 to Kekuanoni, Grant 5147, Apana 1 to C.W.Booth, L.C.Aw. 1351 to Kamakainau, L.C.Aw. 1602 to Kahawai, Grant 4197 to Keauloa, L.C.Aw. 5235 to Kaapuiki and Grant 2587 to Haalelea;

3. Two hundred and ninety-five degrees thirty minutes three hundred and twenty feet along the remainder of government land of Auwaiolimu;

4. Twenty-four degrees sixteen minutes thirty seconds one thousand five hundred seventy-nine and thirty-six one-hundredths feet along the remainder of government land of Auwaiolimu;

5. Thence along middle of ridge along the land of Kewalo-uka to a point called "Puu Iole" (pipe in concrete monument), the direct azimuth and distance being fifty-six degrees no minutes eight hundred and thirty feet;

6. Fifty-two degrees twelve minutes five hundred fifty-two and sixty one-hundredths feet along the land of Kewalo-uka to the point of beginning and containing an area of thirty-three and eighty-eight one-hundredths acres, more or less.

(VII) Being portions of government lands of Kewalo-uka and Kalawahine situated on the east side of Tantalus Drive at Pauoa Valley, Honolulu, Oahu, State of Hawaii. Beginning at the west corner of this parcel of land, the true azimuth and distance to a point called "Puu Ka" (pipe in concrete monument) being one hundred and seventy-four degrees thirty minutes four hundred one and ninety-nine one-hundredths feet, the coordinates of said point of beginning referred to Government Survey Triangulation

Station "Punchbowl" being two thousand eight hundred fifty-five and ten one-hundredths feet north and five thousand two hundred eighty-two and twenty-five one-hundredths feet east and thence running by azimuths measured clockwise from true south:

1. Two hundred and forty-eight degrees nineteen minutes forty seconds eight hundred fifty and fifty-four one-hundredths feet along the land of Kewalo-uka;

2. Sixteen degrees thirty minutes five hundred feet along the land of Kewalo-uka, along the land of Kalawahine;

3. Twenty-five degrees no minutes five hundred feet along the land of Kalawahine;

4. Thirty-five degrees no minutes three hundred and twenty feet along the land of Kalawahine;

5. Fifty degrees forty-six minutes ninety-six and seventy one-hundredths feet along Makiki Forest Ridge lots;

6. Seventy-three degrees twenty minutes two hundred fifty-five and ninety one-hundredths feet along Makiki Forest Ridge lots;

7. Eighty-six degrees thirty-two minutes one hundred sixty-three and forty one-hundredths feet along Makiki Forest Ridge lots;

8. Thence along the south side of Tantalus Drive on a curve to the right with a radius of two hundred and seventy feet, the direct azimuth and distance being two hundred and twenty-one degrees twelve minutes nineteen seconds ninety-eight and thirty-six one-hundredths feet;

9. Two hundred and thirty-one degrees forty-two minutes one hundred ninety-three and thirty-five one-hundredths feet along the south side of Tantalus Drive;

10. Still along Tantalus Drive on a curve to the left with a radius of one hundred eighty and seventy-eight one-hundredths feet, the direct azimuth and distance being one hundred and eighty-one degrees forty-five minutes fifty-five seconds two hundred seventy-six and seventy-two one-hundredths feet;

11. Two hundred and forty-two degrees fifteen minutes sixty-two and thirty-two one-hundredths feet along the land of Kewalo-uka;

12. One hundred and seventy-four degrees thirty minutes five hundred twenty-eight and one one-hundredths feet along the land of Kewalo-uka to the point of beginning and containing an area of five hundred and seventy-four thousand seven hundred and thirty square feet or thirteen and one hundred ninety-four one-thousandths acres.

(5) On the island of Kauai: Upper land of Waimea, above the cultivated sugar cane lands, in the district of Waimea (fifteen thousand acres, more or less); and Moloaa (two thousand five hundred acres, more or less), and Anahola and Kamalomalo (five thousand acres, more or less).

Wailuku, Maui: That parcel of government land, situate in the District of Wailuku, Island and County of Maui, comprising twelve and four hundred and fifty-five one-thousandths acres of the ILI OF KOU and being a portion of the land covered by General Lease Numbered 2286 to Wailuku Sugar Company, Limited, notwithstanding the fact that said parcel is cultivated sugar cane land, subject, however, to the terms of said lease.

Cultivated Sugar Cane Lands: That parcel of Anahola, Island of Kauai, comprising four hundred and one and four hundred and twenty-three one-thousandths acres, hereinafter described and being portion of the land covered by general lease numbered 2724 to the Lihue Plantation Company, Limited, notwithstanding the fact that said parcel is cultivated sugar cane land, subject however, to the terms of said lease, said parcel being more particularly described as follows:

Being a portion of land described in general lease numbered 2724 to the Lihue Plantation Company situate in the district of

Anahola, Kauai, State of Hawaii, beginning at the northwest corner of this parcel of land, the coordinates of which referred to government triangulation station south base are three thousand and forty-nine and sixty-two one-hundredths feet south, one thousand nine hundred and thirty-two and twenty-five one-hundredths feet west, and running thence by azimuths measured clockwise from true south two hundred and eighty-four degrees thirty minutes two hundred and fifty feet, thence on the arc of circular curve to the left, with a radius of eight hundred and ninety feet and a central angle of thirty-five degrees fifteen minutes, the direct azimuth and distance being two hundred and sixty-six degrees fifty-two minutes thirty seconds five hundred and thirty-eight and ninety-six one-hundredths feet, thence two hundred and forty-nine degrees fifteen minutes one thousand eight hundred and nine and twenty-five one-hundredths feet, thence two hundred and twenty-four degrees fifteen minutes three thousand fifty-six feet, thence one hundred and thirty-four degrees fifteen minutes two hundred and seven feet, to the seashore at Anahola Bay, thence along the seashore around Kahala Point, the direct azimuth and distance being two hundred and thirty-seven degrees six minutes seven seconds one thousand and sixty and fourteen one-hundredths feet, thence along the seashore, the

direct azimuth and distance being three hundred and thirty-two degrees no minutes one thousand eight hundred and twenty-seven feet, thence along the seashore, the direct azimuth and distance being three hundred and fifty-five degrees no minutes one thousand eight hundred and twenty-seven feet, thence eighty-seven degrees twenty minutes seven hundred and forty feet, thence fifty-nine degrees no minutes two thousand seven hundred and fifteen feet, thence sixty-nine degrees fifteen minutes one thousand eight hundred and eighty-seven and thirty-six one-hundredths feet, thence on the arc of a circular curve to the right with a radius of three thousand and twelve feet, and a central angle of thirty-five degrees fifteen minutes the direct azimuth and distance being eighty-six degrees fifty-two minutes thirty seconds one thousand eight hundred and twenty-three and ninety-eight one-hundredths feet, thence one hundred and four degrees thirty minutes two hundred and fifty feet, thence one hundred and ninety-four degrees thirty minutes one thousand and thirty-one feet, thence on the arc of a circular curve to the left with a radius of six hundred and seven and ninety-five one-hundredths feet and a central angle of fifty-three degrees three minutes thirty seconds the direct azimuth and distance being seventy-seven degrees fifty-eight minutes fifteen seconds

five hundred and forty-three and nine one-hundredths feet to the government road, thence two hundred and thirty-one degrees twenty-six minutes thirty seconds one hundred and thirteen and sixty-one one-hundredths feet along the government road, thence along the government road on the arc of a circular curve to the left with a radius of four hundred and seventy-seven feet and a central angle of forty-four degrees twenty-six minutes thirty seconds, the direct azimuth and distance being two hundred and nine degrees thirteen minutes fifteen seconds three hundred and sixty and seventy-eight one-hundredths feet, thence one hundred and eighty-seven degrees no minutes one hundred and sixty-nine and fifty-four one-hundredths feet along the government road, thence on the arc of a circular curve to the left with a radius of three hundred and fifty-one and eight one-hundredths feet and a central angle of eighty-two degrees thirty minutes the direct azimuth and distance being three hundred and twenty-five degrees forty-five minutes four hundred and sixty-two and ninety-seven one-hundredths feet, thence one hundred and ninety-four degrees thirty minutes five hundred and seventy-nine feet, thence one hundred and four degrees thirty minutes three hundred feet, thence one hundred and ninety-four degrees thirty minutes two hundred feet, thence two hundred eighty-four degrees thirty

minutes three hundred feet, thence one hundred and ninety-four degrees thirty minutes two hundred and fifty-two feet to the point of beginning containing an area of four hundred and one and four hundred and twenty-three one-thousandths acres more or less."

SECTION 8. Section 209, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (a) to read as follows:

"(a) Upon the death of the lessee, the lessee's interest in the tract or tracts and the improvements thereon, including growing crops and aquacultural stock (either on the tract or in any collective contract or program to which the lessee is a party by virtue of the lessee's interest in the tract or tracts), shall vest in the relatives of the decedent as provided in this paragraph. From the following relatives of the lessee who are (1) at least one-quarter Hawaiian, husband, wife, or children, or (2) native Hawaiian, widows or widowers of the children, grandchildren, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews, -- the lessee shall designate the person or persons to whom the lessee directs the lessee's interest in the tract or tracts to vest upon the lessee's death. The Hawaiian blood requirements shall not apply

to the descendants of those who are not native Hawaiians but who were entitled to the leased lands under section 3 of the Act of May 16, 1934 (48 Stat. 777, 779), as amended[.], or under Section ___ of the Act of _____ (Stat. ,). In all cases such person or persons need not be eighteen years of age. Such designation shall be in writing, may be specified at the time of execution of such lease with a right in such lessee in similar manner to change such beneficiary at any time and shall be filed with the department and approved by the department in order to be effective to vest such interests in the successor or successors so named.

In case of the death of any lessee, except as hereinabove provided, who has failed to specify a successor or successors as approved by the department, the department may select from only the following qualified relatives of the decedent:

(1) Husband or wife;

(2) If there is no husband or wife, then the children.

The rights to the use and occupancy of the tract or tracts may be made effective as of the date of the death of such lessee.

In the case of the death of a lessee leaving no designated successor or successors, husband, wife, or children qualified to be a lessee of Hawaiian home lands, the land subject to the lease

minutes three hundred feet, thence one hundred and ninety-four degrees thirty minutes two hundred and fifty-two feet to the point of beginning containing an area of four hundred and one and four hundred and twenty-three one-thousandths acres more or less."

SECTION 8. Section 209, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (a) to read as follows:

"(a) Upon the death of the lessee, the lessee's interest in the tract or tracts and the improvements thereon, including growing crops and aquacultural stock (either on the tract or in any collective contract or program to which the lessee is a party by virtue of the lessee's interest in the tract or tracts), shall vest in the relatives of the decedent as provided in this paragraph. From the following relatives of the lessee who are (1) at least one-quarter Hawaiian, husband, wife, or children, or (2) native Hawaiian, widows or widowers of the children, grandchildren, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews, -- the lessee shall designate the person or persons to whom the lessee directs the lessee's interest in the tract or tracts to vest upon the lessee's death. The Hawaiian blood requirements shall not apply

shall resume its status as unleased Hawaiian home lands and the department is authorized to lease such land to a native Hawaiian as provided in this Act.

Upon the death of a lessee who has not designated a successor and who leaves a spouse not qualified to succeed to the lease or children not qualified to succeed to the lease, or upon the death of a lessee leaving no such relative qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall appraise the value of all such improvements and growing crops or improvements and aquacultural stock, as the case may be, and shall pay to the nonqualified spouse or the nonqualified children as the lessee shall have designated prior to the lessee's death, or to the legal representative of the deceased lessee, or the previous lessee, as the case may be, the value thereof, less any indebtedness to the department, or for taxes, or for any other indebtedness the payment of which has been assured by the department, owed by the deceased lessee or the previous lessee. Such payments shall be made out of the Hawaiian home loan fund and shall be considered an advance therefrom and shall be repaid by the successor or successors to the tract involved. If available cash in the Hawaiian home loan

fund is insufficient to make such payments, payments may be advanced from the Hawaiian home general loan fund and shall be repaid by the successor or successors to the tract involved; provided that any repayment for advances made from the Hawaiian home general loan fund shall be at the interest rate established by the department for loans made from the Hawaiian home general loan fund.

Such appraisal shall be made by three appraisers, one of whom shall be named by the department, one by the previous lessee or the legal representative of the deceased lessee, as the case may be, and the third shall be selected by the two appraisers aforementioned."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. The provisions of the amendments made by this Act to the Hawaiian Homes Commission Act, 1920, as amended, are declared to be severable, and if any section, sentence, clause, or phrase, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect, then that portion only shall take effect upon the granting of consent

by the United States and effectiveness of the remainder of these amendments or the application thereof shall not be affected.

SECTION 11. This Act shall take effect upon its approval.

Jean O.

2512

THE SENATE
FIFTEENTH LEGISLATURE, 1990
STATE OF HAWAII

S.B. NO. 2699 S.D. 1 H.D. 1 C.D. 1

ACT 305

A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 208, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

"§208. Conditions of leases. Each lease made under the authority granted the department by section 207 of this Act, and the tract in respect to which the lease is made, shall be deemed subject to the following conditions, whether or not stipulated in the lease:

(1) The original lessee shall be a native Hawaiian, not less than eighteen years of age. In case two lessees either original or in succession marry, they shall choose the lease to be retained, and the remaining lease shall be transferred, quitclaimed, or canceled in accordance with the provisions of succeeding sections.

(2) The lessee shall pay a rental of $1 a year for the tract and the lease shall be for a term of ninety-nine years[.]; except that the department may extend the term of any lease provided that the approval of any extension shall be subject to the condition that the aggregate of

the initial ninety-nine year term and any extension granted shall not be for more than one hundred ninety-nine years.

(3) The lessee may be required to occupy and commence to use or cultivate the tract as the person's home or farm or occupy and commence to use the tract for aquaculture purposes, as the case may be, within one year after the [lease is made.] commencement of the term of the lease.

(4) The lessee shall thereafter, for at least such part of each year as the department shall prescribe by rules, so occupy and use or cultivate the tract on the person's own behalf.

(5) The lessee shall not in any manner transfer to, or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and then only upon the approval of the department, or agree so to transfer, or otherwise hold, the person's interest in the tract. Such interest shall not, except in pursuance of such a transfer to or holding for or agreement with a native Hawaiian or Hawaiians approved of by the department, or for any indebtedness due the department or for taxes, or

for any other indebtedness the payment of which has been assured by the department, including loans from other agencies where such loans have been approved by the department, be subject to attachment, levy, or sale upon court process. The lessee shall not sublet the person's interest in the tract or improvements thereon.

(6) Notwithstanding the provisions of paragraph (5), the lessee, with the consent and approval of the commission, may mortgage or pledge the lessee's interest in the tract or improvements thereon to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States; provided the loan secured by a mortgage on the lessee's leasehold interest is insured or guaranteed by the Federal Housing Administration, Veterans Administration, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee such loans. The mortgagee's interest in any such mortgage shall be freely assignable. Such mortgages, to be effective, must be consented to and approved by the commission and recorded with the department.

Further, notwithstanding the authorized purposes of loan limitations imposed under section 214 of this Act and the authorized loan amount limitations imposed under section 215 of this Act, loans made by lending institutions as provided in this paragraph, insured or guaranteed by the Federal Housing Administration, Veterans Administration, or any other federal agency and their respective successors and assigns, may be for such purposes and in such amounts, not to exceed the maximum insurable limits, together with such assistance payments and other fees, as established under section 421 of the Housing and Urban Rural Recovery Act of 1983 which amended Title II of the National Housing Act of 1934 by adding section 247, and its implementing regulations, to permit the Secretary of Housing and Urban Development to insure loans secured by a mortgage executed by the homestead lessee covering a homestead lease issued under section 207(a) of this Act and upon which there is located a one to four family single family residence.

(7) The lessee shall pay all taxes assessed upon the tract and improvements thereon. The department may pay such taxes and have a lien therefor as provided by section 216 of this Act.

(8) The lessee shall perform such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the lease; provided that an original lessee shall be exempt from all taxes for the first seven years [from date of lease.] after commencement of the term of the lease."

SECTION 2. The provisions of the amendments made by this Act to the Hawaiian Homes Commission Act, 1920, as amended, are declared to be severable and, if any section, sentence, clause, or phrase or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect, then that portion only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of these amendments or the application thereof shall not be affected.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

Approved by the Governor on JUL 3 1990